Inasmuch as the evidence offered in the case at bar was for the sole purpose of aiding the jury, in case of conviction, in determining the degree of punishment, and it tended to show what is a national idea and theory that has been bred into the minds of the Chinese for countless ages, it seems that out of justice to the defendant the court should have followed *People v. Costello, supra,* and submitted the evidence to the jury with proper instructions from the court as to its legal effect.

THE LEGALITY OF THE CLOSED SHOP.

In the case of *Schuarz v. International Ladies' Garment Workers' Union,* Chicago *Legal News,* Vol. 42, No. 7, the legal world has another contribution, by Justice Goff of the Supreme Court of New York, on the much mooted question of the legality of the closed shop.

The treasurer of an association of manufacturers of cloaks and skirts for women, as plaintiff, brought an action against the labor unions operating in the trade, to restrain them from interfering with the business of the members of the plaintiff's association, and from acts in furtherance of a conspiracy. It appeared that the unions were maintaining a strike against the members of the plaintiff's association; that they had made certain demands of every manufacturer in the trade, among which was that not to employ non-union men; and that the plaintiff had conceded all such demands, except that for a closed shop. The court held the purpose of the strike to be against public policy and illegal.

There are two classes of cases involving the legality of the closed shop; one where there is no contract between the employer and the union to maintain the same; the other where there is such a contract.

There are two lines of decisions, supported by weighty authorities, concerning the first of the above classes; one line holding that moral coercion, on the part of the unions, to compel the employer to maintain a closed shop is legal, *National Protective Association v. Cummings,* 170 N. Y., 315; *Parkinson v. Building Trades Council,* 154 Cal., 581; the other line holding that such action on the part of the unions is illegal, *Plant v. Wood,* 176 Mass., 996; *Luke v. The Clothing Cutters and Trimmers' As-*

sembly, 77 Md., 396. These two lines of decisions show the two radically different methods the courts have of ascertaining whether the defendants have or have not committed a legal wrong.

The courts that consider the actions of the defendants to be legal, consider primarily the rights of the defendants, that a man, not under a contract with another, may work or refuse to work as he pleases, and whatever one man may do alone, he may do in combination with others. *National Protective Association v. Cummings, supra.* The courts that held the opposite view consider the injury done to the plaintiff, and assume that if the defendants have injured the plaintiff, they are liable for the injury, unless they can show a legal excuse. *International & Great Northern R. Co. v. Greenwood,* 2 Tex., C. A., 81; *Erdman v. Mitchell,* 207 Pa. St., 89.

In this day of powerful combinations there can be no doubt that the granting or withholding of labor may be made under circumstances and conditions which inflicts injury on others, and leaves the actors without any legal excuse for the injury inflicted. *Arthur v. Oakes,* 63 Fed., 310.

With the courts differing on the fundamental principles as to the liability of the defendants, it becomes desirable that there should be some criterion by which the legality or illegality of the defendant's acts might be established. This criterion certainly cannot be found in recognizing an inherent right in man to do certain acts, irrespective of the circumstances under which he does them. That injury is done to the plaintiff in every such case cannot be denied, and the recognition of such a right would be in contravention of that principle of the common law, which holds a man liable for the injury he does another without legal excuse. The public has an interest in the correct determination of all these cases, and its interst should not be lost sight of by the courts. *McCord v. Thompson-Starrett Co.,* 198 N. Y., 587.

It seems that the correct rule would be to hold the defendants *prima facie* liable for the injury done to the plaintiff, and leave them to excuse their acts by showing that the best interest of the public is subserved by holding their actions to be lawful. As was said by *Wm. Draper Lewis,* 18 Harvard Law Review, 444, "What is needed is to get rid of the notion that there are some acts which a man has an inherent right to do under all circumstances, and hold to the fundamental position of our common law

—that he who injures his fellow-man is liable for that injury, unless he can show that the community regards his act as conducive to the public welfare."

It appears that the principal case was decided according to this view. The facts show the unions were very strong in the Borough of Manhattan, and practically controlled the labor of that trade; that all the demands of the unions were complied with, except that of the closed shop, so the question of the legality of the closed shop was squarely presented for determination, and the court held, "That the primary purpose of the strike was to drive non-union employees out of the trade in the borough, except on the condition of joining one of the defendant unions, that the purpose was against public policy and illegal."

As to the second class of cases—where there is a contract between the employer and the union to unionize his shop—it would seem that the unions would be placed in a better position, as the freedom of contract is involved. But concerning the legality of the contract in cases where the purpose is to enforce the contract between the parties, and to justify the discharge of third parties according to its provisions, the courts are divided, as in the cases where no contract exists between the parties.

The case of *Berry v. Donovan,* 188 Mass., 353, was an action for damages brought by a workman against the representatives of a labor union for causing his discharge, there being a contract between the employer and the union to employ only union men; and an opportunity having been given to the plaintiff to join the union, the employer was requested to discharge him. The court decided the case on the ground of unlawful interference with a workman already employed, reserving its opinion as to a workman needing employment and prevented from getting it. But the result seems to be that the court considered the contract to be unlawful; for if unlawful, all acts done under it would be justified.

In the case of *Jacobs v. Cohen,* 183 N. Y., 207, the question of the lawfulness of the contract was directly presented, and the court held the contract to be lawful, at the same time failing to overrule the prior case of *Curran v. Galen,* 152 N. Y., 33, where the contract was decided to be unlawful, but attempted to distinguish the two cases.

It may be said, from the cases just referred to, that the tendency of the authorities is against the validity of such a contract.

and the reason given by the courts for so holding seems to be based on the ground of public policy. "Such an agreement," said the court, in *Jacobs v. Cohen, supra,* "when participated in by all or by a large proportion of employees, becomes oppressive and contrary to public policy, because it operates generally upon the craftsmen in the trade and imposes upon them, as a penalty for refusing to join the favored union, the practical impossibility of obtaining employment at their trade and thereby gaining a livelihood."

A TRESPASSER'S RIGHT OF SELF-DEFENSE WHEN ASSAULTED.

The law of self-defense is older than the law itself. It is well settled that one has a right to resist force with force when he is put in fear of bodily harm. But some doubt has recently arisen as to whether one who is a trespasser is entitled to the right of self-defense when he is attacked by the owner of the premises on which he is a trespasser. This question was raised in a late Texas case, *Cox v. State,* 123 S. W., 696, where the trespasser seeking illicit intercourse with the owner's wife entered his house during his absence and was surprised by the unexpected return of the owner. The trespasser attempted to flee, but was overtaken by the owner and was being severely assaulted when he turned upon the husband and assaulted him. In an action for aggravated assault the trespasser, Cox, pleaded self-defense. The court instructed the jury that though the defendant's purpose in entering the house was unlawful, where he abandoned his purpose and sought to escape from the house before being pursued by the owner, he may resist the pursuit and repel assault by force and plead self-defense.

The very nature of self-defense is such that it should not be denied to any one whose position is such that its exercise is necessary to the preservation of his life, yet the very nature of this doctrine is also such that it should be applied with the utmost caution. Self-defense is the resistance of force or seriously threatened force, actually impending or reasonably apparent, by force sufficient to repel the actual or apparent danger and no more. 35 *Cyc.,* 1373. One assaulted may repel force with force and acts done in self-defense cannot be an assault. *People v. Lynch,* 101 Cal., 229. Nor is one justified in using force to expel a mere